

Federal Law Amending the Copyright Act

(No. 295, of February 19, 1982)*

Article I

Amendment of the Copyright Act

The Copyright Act, published in the *Bundesgesetzblatt* (BGBl.) No. 111/1936, as amended by the Federal Laws published in BGBl. No. 206/1949, BGBl. No. 106/1953, BGBl. No. 175/1963, BGBl. No. 492/1972 and BGBl. No. 321/1980, and the Notice in BGBl. No. 142/1973, is hereby amended as follows:

1. The following paragraph (2) shall be added to Article 24 which shall now be numbered (1):
“(2) A license to use a work that has been issued before a right to use a work has been granted or assigned shall continue to have effect as regards the person entitled to use the work, where not otherwise agreed with the owner of the authorization to use the work.”
2. In Article 26, the words “Article 24, sentence 2” shall be replaced by “Article 24(1), second sentence.”
3. The following paragraph (3) shall be added to Article 38:
“(3) In the absence of proof to the contrary, the person who is designated in the usual manner as the producer on the copies of a cinematographic work by mention of his true name, of his company or of a pseudonym or company designation that he is known to use, shall be presumed to be the producer of the film. The same shall apply to the person designated as the producer in the above-mentioned way in the case of a public performance or a broadcast of the cinematographic work, except where the assumption made in the preceding sentence suggests that the film producer is another.”
4. The following provision, together with its heading, shall be inserted after Article 42:

“Reporting of Current Events

Article 42a. Works perceptible to the public in the course of happenings that are the subject of reporting on current events may be reproduced, disseminated, broadcast or used for public recitals, performances and presentations to the extent justified by the informatory purpose.”

5. Article 49 shall be repealed.
6. Paragraph (2) of Article 52 shall be repealed.
7. The remaining paragraph (1) of Article 52 shall no longer bear a paragraph number.
8. In Article 57(2), the words “Article 52(1), item 1,” and “Article 52 (1), item 2 or 3,” shall be replaced by the words “Article 52, item 1,” and “Article 52, item 2 or 3.”

*Published in the *Bundesgesetzblatt für die Republik Österreich*, No. 124, of June 30, 1982. – WIPO translation.

9. Article 58(1) shall read:

“(1) Where the entitled person has permitted another person to duplicate and distribute a musical work on sound recordings, any manufacturer of such recordings may require from the entitled person, once the work has appeared, that the same use of the work be permitted to him in return for equitable compensation; where such manufacturer has his place of residence or principal place of business abroad this shall apply only on condition, subject to any international treaties, that manufacturers having their place of residence or principal place of business in Austria are treated in such State in approximately the same way or at least in the same way as manufacturers having their place of residence or principal place of business in such State. Reciprocity shall be deemed to exist when it has been established in a Notice of the Federal Minister for Justice with respect to the legal situation in the State concerned. In addition, the competent authorities may conclude an agreement on reciprocity with another State where this appears appropriate to safeguard the interests of Austrian manufacturers of sound recordings. The permission to use the work shall be valid only for the duplication and distribution of works on sound recordings in Austria and for their export to States in which the author does not enjoy protection against the duplication and distribution of the work on such recordings.”

10. Paragraphs (2) to (4) of Article 61 shall be repealed.

11. The remaining paragraph (1) of Article 61 shall no longer bear a paragraph number.

12. The following provisions, together with their heading, shall be inserted after Article 61:

“Register of Authors

Article 61a. Within the term specified in Article 61, the name of the author (Article 10(1)) may be notified to the Register of Authors maintained by the Federal Minister for Justice either by the author or by the persons upon whom the copyright devolves after his death. Upon such notification, the term of protection shall be computed pursuant to Article 60.

Article 61b.

(1) The notification shall be in writing. Each notification shall contain the type and the title of the work or other designation, the time, place and type of publication, the author’s designations hitherto used, forename and surname of the author (Article 10(1)) and forename and surname, employment and place of residence of the person making the registration. A notification may cover more than one work attributed to the same author.

(2) The registration shall be made by the Federal Minister for Justice without examination of the entitlement of the person making the notification to do so or of the correctness of facts notified; it shall in any event contain the particulars required by paragraph (1). Where the notification also states the day and place of birth of the author or of his death, or his nationality, such particulars shall also be registered.

Article 61c.

(1) The registration shall be publicly announced at the cost of the person making the notification in the *Amtsblatt zur Wiener Zeitung*.

(2) Any person may have access to the Register of Authors and require the making of officially certified abstracts and the issue of certification that a specific work is not entered in the Register of Authors.”

13. Article 66(5) shall read:

“(5) Unless an exception is permitted by this Act, and subject to paragraph (1), recitals and performances given under the direction of an organizer may be recorded on video or sound

recordings with the consent of the organizer. Video or sound recordings manufactured in violation of this provision may be neither duplicated nor distributed.”

14. Article 67(1) shall read:

“(1) The rights of exploitation of the persons specified in Article 66(1) and (5) shall terminate when 50 years have elapsed from the expiration of the calendar year in which the recital or performance was given.”

15. Paragraph (1) of Article 69 shall be repealed. The existing paragraphs (2) to (4) of Article 69 shall be renumbered (1) to (3).

16. Article 70(2) shall read:

“(2) The authorization required under paragraph (1) shall not be required for a broadcast using video or sound recordings, except where Article 66(7) or Article 69(2) do not permit the latter to be used for a broadcast.”

17. Article 72(3) shall read:

“(3) For the purposes of reporting current events, recitals and performances that are perceptible by the public during events that are being reported may be recorded on video or sound recordings to an extent that is justified by the informatory purpose and may be broadcast and publicly reproduced; such video or sound recordings may be duplicated and distributed to such extent. Whether and to what extent the persons entitled to exploitation under Article 66(1) may require in such a case that their name be stated on the video or sound recordings shall be judged in accordance with practice and usage in fair trading.”

18. The existing paragraphs (3) to (5) of Article 72 shall be renumbered (4) to (6).

19. Article 74(7) shall read:

“(7) Articles 5, 7, 8, 9, 11, 12, 13, 14(2), 15(1), 16, 17, 18(3), 23(2) and (4), 24, 25(2) to (6), 26, 27(1), (3), (4) and (5), 31(1), 32(1), 33(2), 36, 37, 41, 42a, 54.3 and 4, 56 and 59a and those provisions of Article 42(1) to (3) and (5) to (7) applicable to works of fine art shall apply by analogy to photographs.”

20. Article 76(3) shall read:

“(3) Where a sound recording made for commercial purposes is used for a broadcast (Article 17) or for communication to the public, the user shall pay equitable remuneration to the producer (paragraph (1)) subject to Article 66(7) and paragraph (2) above. The persons referred to in Article 66(1) may claim from the producer a share of such remuneration. In the absence of agreement between the entitled parties, such share shall be one-half of the remuneration remaining to the producer after deduction of the costs of collection. The claims of the producer and of the persons referred to in Article 66(1) may only be asserted by collecting societies or by one single collecting society.”

21. Article 76(6) shall read:

“(6) Articles 5, 7, 8, 9, 11, 12, 13, 14(2), 15(1), 16(1) and (3), 23(2) and (4), 24, 25(2), (3) and (5), 26, 27(1), (3), (4) and (5), 31(1), 32(1), 33(2), 41, 42a, 56, 72(4), and 74(2) to (5) shall apply by analogy; in the case of paragraphs (2) and (4), Article 59a shall also apply by analogy.”

22. Article 76a (5) shall read:

“(5) Articles 5, 7, 8, 9, 11, 12, 13, 14(2), 15(1), 16(1) and (3), 18(2), 23(2) and (4), 24, 25(2), (3) and (5), 26, 27(1), (3), (4) and (5), 31(1), 32(1), 33(2), 41, 42a, 56, 59a, 72(4) and 74(2) to (5) shall apply by analogy.”

23. Article 79 shall read:

“Article 79.

(1) Press reports of the kind specified in Article 44(3), which are contained in press releases or other communications for the transmittal, for consideration, of news to newspapers and periodicals, may not be reproduced in newspapers and periodicals until at least 12 hours have elapsed following their publication in a newspaper or periodical authorized to do so by the collector of the news.

(2) For the application of paragraph (1), all establishments engaged in the periodical dissemination of news to the general public shall be treated in the same way as newspapers and periodicals. However, Article 59a shall apply by analogy.”

24. The heading of Part III shall read:

“Exercise of rights.”

25. Article 81(1) shall read:

“(1) Any person whose exclusive right granted by this Act has been infringed, or any person who has reason to suspect that such infringement could occur, may request an injunction. An action may also be brought against the proprietor of an enterprise where such infringement has been committed or is likely to be committed within the activities of enterprise by one of his employees or agents.”

26. Article 85 shall read:

“Article 85.

(1) Where an action is brought for an injunction, for destruction or for a declaratory judgment as to the existence or non-existence of an exclusive right under this Act or as to authorship (Article 19), the court shall authorize the prevailing party, if the latter has a legitimate interest therein and so requests, to publish the judgment within a certain period of time at the expense of the opposing party. The manner of such publication shall be set out in the judgement.

(2) Publication shall comprise the text of the judgment. At the request of the prevailing party, however, the court may order a publication whose content differs in scope or wording from the judgment or contains a supplement. Such request shall be submitted within four weeks of the judgment becoming final. Where the request is not submitted until after completion of the oral proceedings, the court of first instance shall decide by means of an order after the judgment has become final.

(3) At the request of the prevailing party, the court of first instance shall determine the cost of publication and direct the opposing party to reimburse such cost.

(4) Publication required by a final decision or any other enforcement order shall be carried out by the media undertaker without unnecessary delay.”

27. In Article 86(1) and (2), the words “Article 69(3)” shall in each case be replaced by the words “Article 69(2).”

28. Article 87(3) shall read:

“(3) The injured party whose consent should have been obtained may claim twice the compensation due to him under Article 86 for the culpable pecuniary damage caused to him (paragraph (1)) if no greater damage can be proved.”

29. The following provision, together with its heading, shall be inserted after Article 87:

“RENDERING OF ACCOUNTS

Article 87a. Any person required by this Act to pay equitable compensation or equitable remuneration, to pay damages or to surrender profit, shall render account to the person entitled and shall have the accounts examined by an expert. Where such examination shows an amount greater than that in the accounts rendered, the cost of examination shall be borne by the person required to make payment.”

30. Article 90 shall read:

“Article 90.

(1) Prescription of claims for equitable compensation, for equitable remuneration and for surrender of profit shall apply in accordance with the provisions on actions for damages.

(2) Claims of individual entitled persons or of groups of entitled persons against the collecting society shall be subject to prescription, irrespective of the person entitled having knowledge of the facts on which are based the obligation to payment of the collecting society, on expiry of three years counted from such time.”

31. Article 91 shall read:

“Article 91.

(1) Any person who commits an infringement of the kind specified in Article 86(1) shall be liable to imprisonment not exceeding six months or fine not exceeding 360 per diems.

(2) Any person who, being owner or director of an enterprise, does not prevent infringements of this type from being committed within the activities of the enterprise by an employee or an agent shall also be punishable.

(3) The infringer shall only be prosecuted on request of the person whose right has been infringed.

(4) Article 85(1), (3) and (4) concerning publication of the judgment shall apply by analogy.

(5) The penal proceedings shall be heard by the judge of the court of first instance sitting singly.”

32. Article 96 shall read:

“Article 96.

(1) For the works of foreign authors (Article 10(1)) not protected under Article 94 or Article 95, copyright protection shall be afforded, subject to international treaties, on condition that the works of Austrian authors are also protected in approximately the same way in the State of which the foreign author is a national, but in any event to the same extent as works of nationals of that State. Reciprocity shall be deemed to exist when it has been determined in a Notice of the Federal Minister for Justice with respect to the legal situation in the State concerned. In addition, the competent authorities may conclude an agreement on reciprocity with another State where this appears appropriate to safeguard the interests of Austrian authors.

(2) The term of protection enjoyed by foreign authors for their works in Austria under the Universal Copyright Convention of September 6, 1952 (BGBl. No. 108/1957), or under the Universal Copyright Convention as revised on July 24, 1971 (BGBl. No. 293/1982), shall be computed on the basis of Article IV.4, first paragraph, or Article IV.4(a), respectively, of those Conventions.”

33. Article 97(2) shall read:

“(2) In the case of recitals and performances that take place abroad, Articles 66 to 72 shall apply in favor of Austrian nationals. Foreigners shall be protected in respect of such

recitals and performances, subject to international treaties, on condition that the recitals and performances of Austrian nationals are also protected in approximately the same way in the State of which the foreigner is a national but, in any event, to the same extent as recitals and performances of nationals of that State. Reciprocity shall be deemed to exist when it has been determined in a Notice of the Federal Minister for Justice with respect to the legal situation in the State concerned. In addition, the competent authorities may conclude an agreement on reciprocity with another State where this appears appropriate to safeguard the interests of Austrian holders of exploitation rights under Article 66(1).”

34. The heading preceding Article 99 shall be replaced by the following headings:

**“Sound Recordings and Broadcasts
Sounds Recordings.”**

35. Article 99 shall read:

“Article 99.

(1) Sound recordings shall be protected in accordance with Article 76, regardless of whether and how they are published, if the producer is an Austrian national. Article 98(2) shall apply by analogy.

(2) Other sound recordings shall be protected in accordance with Article 76(1), (2) and (4) to (6) if they have been published in Austria.

(3) Sound recordings of foreign producers that have not been published in Austria shall be protected under Article 76(1), (2) and (4) to (6), subject to international treaties, on condition that the sound recordings of Austrian producers are also protected in approximately the same way in the State of which the foreign producer is a national but in any event to the same extent as the phonograms of nationals of that State. Reciprocity shall be deemed to exist when it is determined in a Notice of the Federal Minister for Justice with respect to the legal situation in the State concerned. In addition, the competent authorities may conclude an agreement on reciprocity with another State where this appears appropriate to safeguard the interests of Austrian producers of sound recordings.

(4) Sound recordings of foreign producers that have not been published in Austria shall further be protected under Article 76(1), (2) and (4) to (6) if the producer is a national of a Contracting State of the Convention of October 29, 1971 (BGBl. No. 294/1982), for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms.

(5) Protection under Article 76(3) may be claimed by foreigners, in any event, only in accordance with international treaties.”

36. The following title shall be added at the head of Article 99a:

“Broadcasts.”

37. In Article 110(2), the words “Article 66(1) or (2)” shall be replaced by the words “Article 66(1).”

38. Article 114(2) shall read:

“(2) Its implementation shall be entrusted to the Federal Minister for Justice.”

Article II
Transitional Provisions

(1) The Federal Minister for Education and the Arts shall without delay transmit to the Federal Minister for Justice the Register of Authors kept under Ordinance BGBl. No. 171/1936 and the Registers of

Authors kept under RGBL No. 198/1895 and BGBL No. 92/1921 together with all documents concerning these Registers.

(2) Access to the Registers and the making of extracts and issuing of certificates shall be governed by Article 61c(2) of the Copyright Act as amended by this Federal Law.

Article III

Final Provisions

(1) This Federal Law shall enter into force, subject to paragraph (2), on July 1, 1982.

(2) Article I.35 shall enter into force on the day on which the Convention of October 29, 1971 (BGBL No. 294/1982), for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms enters into force in respect of Austria.

(3) With the entry into force of this Federal Law, the following shall be repealed:

1. The Ordinance of the Federal Minister for Education in agreement with the Federal Ministers concerned, regarding the Register of Authors, BGBL No. 171/1936;

2. The Federal Law of November 7, 1956 (BGBL No. 109/1957), on the implementation of the Universal Copyright Convention of September 6, 1952 (BGBL No. 108/1957).

(4) The implementation of this Federal Law shall be entrusted to the Federal Minister for Justice, in agreement, as regards Article II(1), with the Federal Minister for Education and the Arts.
